BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Final Title V Operating Permit Issued to New United Motor Manufacturing, Inc. to operate an automotive manufacturing plant located in Fremont, California Issued by the Bay Area Air Quality Management District	)	Facility Permit # 16480

PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE TITLE V OPERATING PERMIT FOR NEW UNITED MOTOR MANUFACTURING, INC.

INTRODUCTION

Pursuant to Section 505(b)(2) of the Clean Air Act (the "Act"), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Our Children's Earth Foundation ("OCE") ("Petitioner") hereby petitions the Administrator ("the Administrator") of the United States Environmental Protection Agency ("U.S. EPA") to object to issuance of the Title V Operating Permit for New United Motor Manufacturing, Inc. ("NUMMI"), Facility #A1438, Permit Application #16480 ("Title V permit").

The draft Title V permit was proposed to U.S. EPA by the Bay Area Air Quality Management District ("BAAQMD" or "District") for EPA review in a letter to Jack Broadbent, Director, Air Management Division, U.S. EPA Region 9, dated August 2, 2002. This petition is filed within sixty days following the expiration of U.S. EPA's 45-day review period, as required by Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2). The Administrator must grant or deny this petition within sixty days after it is filed. *See id.* In compliance with Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), this petition is based on objections to the New United Motor

Manufacturing, Inc. draft Title V permit that were raised during the public comment period provided by the Act. Petitioner's initial and supplemental comments on the draft Title V permit are attached as Exhibits A and B for reference.[1]

PETITIONER

Petitioner OCE is an organization dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to improve environmental quality for the public benefit. OCE has members who live, work, recreate and breathe air in the San Francisco Bay Area, including Fremont where NUMMI is located, and OCE is active in issues concerning air quality in the Bay Area and throughout the State of California.

APPLICANT—NUMMI

NUMMI has operated since 1984 (or 1979 under different ownership) and has undergone significant modifications and upgrades since that time. *See* Permit Evaluation & Statement of Basis for Major Facility Review Permit, NUMMI, Facility #A1438 ("Statement of Basis"). The manufacturing operations at NUMMI include metal stamping, body wielding, plastic plant, painting, and vehicle assembly for passenger cars and trucks. *Id.* at 3. The plastic plant manufactures the plastic bumpers and instrument panels utilized in the vehicles. The bumpers and instrument panels are then painted at the facility. *Id.* Painting also occurs for the car bodies and truck cabs. Before painting, the car bodies and truck cabs are cleaned, given a rust inhibiting undercoat of Electrophrophoretic Primer and sealant to soundproof and protect the vehicle. Then each body receives a second coat of paint, called Primer Surfacer, followed by sanding and the application of a final basecoat and clearcoat layer of paint. *Id*. at 4.

NUMMI's major sources of air emissions are precursors to ground-level ozone—volatile organic compounds ("VOCs") from the painting operations, and nitrogen oxides ("NOx") from natural gas combustion for VOC control and air heating. *See* Statement of Basis at 4. According

[1] The original public comments on the draft Title V permit for NUMMI, submitted by the ELJC on September 20, 2002 and October 7, 2002, are attached to this petition for reference only. This petition does not raise all of the issues in the original comments on the draft permit.

to the California Air Resources Board ("CARB") emissions inventory for 1999, NUMMI emitted 511.4 tons per year of reactive organic compounds and 58.9 tons per year of NOx.[2]

GROUNDS FOR OBJECTIONS

Petitioner requests that the Administrator object to the Title V permit for NUMMI, because it does not comply with 40 C.F.R. Part 70. In particular:

1) The permit improperly omits short-term emission limitations that are necessary to assure compliance with all applicable requirements as mandated by 40 C.F.R. §§ 70.1(b) and 70.6(a)(1);
2) The permit must include a compliance plan consistent with 40 C.F.R. Part 70 requirements, if NUMMI is in violation of the production limits for its truck line.
3) The production limits for the truck line, deleted from the permit, are emissions limitations that must be retained unless the District can justify the substitute limits are equivalent.
4) The permit fails to include a sufficient Statement of Basis as required by 40 C.F.R. § 70.7(a)(5);
5) The permit conditions do not assure compliance with all applicable requirements as required by 40 C.F.R. §§ 70.6(a)(1), 70.6(c), and 70.7(a)(1)(iv);
6) The permit review process failed to comply with the public participation requirements of the Clean Air Act § 503(e), 42 U.S.C. § 7661b(e) and 40 C.F.R. § 70.7(h)(2).
7) The permit contains inadequate monitoring and reporting requirements to assure compliance with permit terms and conditions as required by 40 C.F.R. §§ 70.6(a)(3) and 70.6(c)(1); and
8) The permit does not comply with Section 112(j) of the Clean Air Act, 42 U.S.C. §7412(b)(1), as modified by 40 C.F.R. § 63 Subpart C, regarding National Emission Standards for Hazardous Air Pollutants ("NESHAPs").

[2] *See* CARB 1999 Emissions Inventory available at http://www.arb.ca.gov/app/emsinv/facinfo/facdet.php?co_=1&ab_=SF&facid_=1438&dis_=BA&dbyr=1999 (last accessed October 7, 2002).

If the Administrator determines that a permit does not comply with legal requirements, she must object to its issuance. 40 C.F.R. § 70.8(c)(1). The significant violations of 40 C.F.R. Part 70 discussed below require the Administrator to object to the Title V permit issued to NUMMI.

I. The Permit Improperly Omits Short-Term Emission Limitations that Are Necessary to Assure Compliance with All Applicable Requirements as Required by 40 C.F.R. §§ 70.1(b) and 70.6(a)(1).

A Title V permit must assure compliance "with all applicable requirements." 40 C.F.R. § 70.1(b). The Title V permit for any facility must include all "emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." 40 C.F.R. § 70.6 (a)(1). The Title V permit for NUMMI does not assure compliance as it eliminates short-term emissions limitations that are necessary to ensure practical enforceability of and compliance with all "applicable requirements."

On March 4, 1993, the District imposed operational limits on the NUMMI truck line of 20 hours per day, 6 days per week, 50 weeks per year or 5,000 hours per year, for which NUMMI must keep hourly, daily and monthly records to demonstrate compliance. *See* Condition # 9084, I.1 and I.3, NUMMI Authority to Construct Application No. 10339, March 4, 1993. In addition, the current operating permits contain usage rate limitations on both the passenger vehicles and truck lines in gallons per day and gallons per hour. Throughout the Title V permit, however, the District has removed all references to hourly and daily emissions limitations for both lines.[3] These material usage and operational limits are emissions limitations for purposes of the Clean Air Act.[4]

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[3] See, for example, the following conditions in the Title V permit for NUMMI: Permit Condition # 7364.2, p. 171; Permit Condition # 9159.2, p. 180; Permit Condition # 9161.2, p. 182; Permit Condition # 9163.2 and # 9163.3, p. 184; Permit Condition # 9164.16, pp. 191-192; Permit Condition # 9170.2 and # 9170.3, pp. 195-196; Permit Condition # 9172.2, p. 198; Permit Condition # 9257.2 and #9257.3, p. 201; Permit Condition # 10011.2, p. 203.

[4] *See* Clean Air Act § 302(k), 42 U.S.C. § 7602 (k); *see also* Clean Air Act § 304(f)(4), 42 U.S.C. § 7604 (f)(4) ("emission standard or limitation" includes any effective "standard, limitation or schedule established under [any

The District fails to explain why these short-term emissions limitations were removed from the proposed Title V permit.[5] Although Petitioner formally requested to inspect all permit files for the facility, including preconstruction permit applications, the list of permit files made available for public inspection did not include the applications for the initial Permits to Operate or Authorities to Construct for the truck and passenger lines. Thus, Petitioner has been unable to evaluate the purpose for which the short-term emissions limits were initially imposed.

While the District attempts to justify the removal of these limits with regard to Permit Condition # 207, which affects sources in the facility's passenger line, the justification provided is flawed. It states: "Daily and hourly limits were removed because they were derived from monthly limits and demonstrated by recordkeeping. These changes are administrative in nature and have no effect on emissions." *See* Statement of Basis at 9, 41; *see also* Title V Permit Condition # 207, pp. 157-165. Moreover, there is no explanation provided for the removal of short-term emissions limitations for those conditions other than Permit Condition # 207. *See* examples in footnote 3.

A. Short-Term Emissions Limitations Ensure Enforceability of Applicable Requirements

The Administrator must object to the permit because the removal of short-term emissions limitations is unjustified. Removal of the short-term limits is a material, not an administrative, change that significantly undermines the purpose of pollution controls and public health monitoring as well as practical enforceability of emissions limitations. Short-term emissions limits are not merely meaningless, administrative, recordkeeping requirements. The fact that a daily limitation was met in the past, as demonstrated by recordkeeping, does not necessarily mean that it will be met in the future, particularly if the limits are removed. Short-term limits are imposed to ensure that the emissions limitations are enforceable as a practical matter. Short-term

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Title V permit or an applicable federally-enforceable SIP], any permit term or condition, and any requirement to obtain a permit as a condition of operations").

[5] According to the District engineer who drafted the Title V permit for NUMMI, the short-term emissions limitations were imposed on the passenger and truck lines as part of the initial permitting process. Telephone conversation between ELJC staff scientist Kenneth Kloc and Ms. Carol Lee, BAAQMD Senior Air Quality Engineer, November 5, 2002.

limits allow the District to practically enforce an emissions limitation that is necessary to assure that the NAAQS are met.

Inclusion of only monthly averaging is not sufficient to limit significant yet isolated emissions over the short term that may have health and environmental impacts. Thus, for example, enforcement of daily limits of VOC emissions could impact whether there are ozone exceedances for 8-hour and 24-hour standards.

The San Francisco Bay Area is in nonattainment for ozone. 40 C.F.R. § 81.305. In fact, the air quality monitoring equipment at the Livermore station near the NUMMI facility recorded ozone concentration levels in excess of the federal 8-hour ozone standard on at least two occasions in 2001. *See* BAAQMD Bay Area Pollution Summary—2001, available at http://www.baaqmd.gov/pie/apsum/pollsum01.pdf (last accessed November 5, 2002). Further, the only two Bay Area exceedances of the federal one-hour standard during the Bay Area's 2002 "smog" season were also at the nearby Livermore station on July 10 and August 9. *See* BAAQMD Press Release, October 23, 2002, available at http://www.baaqmd.gov/pie/press/sta02end.pdf (last accessed November 12, 2002).

The U.S. EPA recognizes the importance of short-term emissions limitations. According to Region 8, "all permit limits imposed through a SIP-approved permit program are federally enforceable [citation omitted] and are also 'applicable requirements' which must be included in a facility's Title V permit (see 40 C.F.R. §70.2)." *See* Letter from Richard R. Long, Director, Air and Radiation Program, to Dave Ouimette, Air Pollution Control Division, Department of Public Health and Environment, Ref: 8P-AR, available at http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/short.pdf (last accessed on November 5, 2002) (attached as Exhibit C). Region 8 expressed "significant concerns" about the implementation of a proposed policy by the State of Colorado that omitted short-term emissions limitations from permits that were apparently established under its minor source preconstruction permit program. *Id.* Removal of the short-term emissions limitations "could result in a significant increase in emissions from stationary and area sources, the cumulative effects of which will not be appropriately analyzed, leading to potential violations of the NAAQS and increments and

negative impacts on public health and welfare." *Id.* This is due to the "greater variability" a source has in its emissions on a short-term basis when a simple multiplier is applied to change a short-term (24-hour) limit to a long-term (annual) limit, which must be taken into account in both permit and SIP modeling. *Id.* According to U.S. EPA Region 8, this requires a "worst-case approach" to modeling not only for the applicant source, but also for other sources that contribute to nearby or background concentrations, using the sources' maximum potential to emit over 24 hours. *Id.* "When evaluating impacts on a 24-hour NAAQS . . . , it is necessary to analyze emissions over 24 hours" as "[t]he annual limits provide no assurance that the sources being modeled will limit emissions to 1/365 of the annual limit on a 24-hour basis." *Id.* Thus, the District may not omit the short-term limits unless it can demonstrate that it will result in no violations of short-term NAAQS.

Like the short-term limits in Colorado's construction permits, the short-term emissions limitations imposed by the BAAQMD are "applicable requirements" which must be included in the Title V permit. Accordingly, the Administrator must object to the permit.

B. Removal of Short-Term Emissions Limitations Has Additional Significant Enforcement Implications.

Removal of the short-term emissions limitations has other significant enforcement implications as well. For example, enforcement of violations of daily limits could be discovered and remedied earlier than with monthly or annual limits, so as to avoid even greater exceedances over the long-term. Moreover, retaining the short-term limits has further enforcement implications with regard to the greater penalties that may be imposed on a violator.[6] Thus, retaining the short-term limits provides the necessary flexibility to impose the maximum penalty on violators. Because a violation of a short-term emissions limitation is potentially harmful to

[6] In fact, the Fourth Circuit has held that a district court could fine a violator the maximum civil penalties for thirty consecutive days of daily violations instead of one violation of monthly averages under the Clean Water Act, 33 U.S.C.S. § 1365 *et seq*. Chesapeake Bay Found. v. Gwaltney of Smithfield, 791 F.2d 304, 314 (4th Cir. 1986) (rev'd on other grounds, *see* Chesapeake Bay Found. v. Gwaltney of Smithfield, 48 U.S. 49, 67 (1987) holding that "the court below erroneously concluded that respondents could maintain an action based on wholly past violations."). Upholding the district court's ruling, the court stated, "the approach employed . . . is essential to providing a . . . framework within which [the court] will have sufficient flexibility to assess penalties that suit the particular circumstances of each case." *Id.* at 314. Further, the Fourth Circuit stated: "both large, isolated discharges and moderate, long-term discharges are potentially harmful." *Id*. at 315.

public health and the environment and may contribute to daily exceedances of NAAQS, it should be assessed and penalized as a separate violation from a violation of a long-term limit.

For the above stated reasons, the Administrator must object to the Title V permit for NUMMI as it does not assure compliance "with all applicable requirements" pursuant to 40 C.F.R. §§ 70.1(b) and 70.6 (a)(1).

II. The Permit Must Contain a Compliance Plan Pursuant to 40 C.F.R. Part 70, if NUMMI Is in Violation of the Operational Limits for its Truck Line.

On March 4, 1993, NUMMI was issued a change in permit conditions, which imposed production limits on the truck line of 38 vehicles per hour, 650 vehicles per day, 13,000 vehicles per month, and 125,000 vehicles per year. *See* Condition # 9084, I.2 and I.3, NUMMI Authority to Construct Application No. 10339, March 4, 1993. In October 1993, NUMMI applied for and was later issued another change of conditions, revising the operational limit for the truck line to a 250,000 *unit* limit. *See* NUMMI Authority to Construct Application No. 12094, October 18, 1993. The draft Title V permit contains the 250,000 unit limit for coatings of truck parts (125,000 truck cabs and 125,000 truck beds, or some proportional equivalent). *See* NUMMI Title V Permit Condition # 9156, I.1, p. 173. Unless NUMMI manufacturers trucks with cabs or beds that are not coated at the NUMMI facility, this 250,000 unit limit in effect is a 125,000 truck per year limit. Further, NUMMI is required to maintain hourly, daily and monthly records on the numbers of vehicles produced to demonstrate compliance with this limit. *See* NUMMI Title V Permit Condition # 9156, I.2, p. 173.

NUMMI's operating permit provides that it must comply with the 250,000 unit limit, unless it can demonstrate that any overage will not result in material or emissions increases, a demonstration which requires written approval from the APCO ("Any increase above 250,000 units coated shall not be made, unless NUMMI can demonstrate to and obtain written approval from the APCO that such changes will not require any material or emissions increases"). *See* NUMMI Permit Condition # 9156, I.1, p. 173. These production or operational limits are

emissions limitations for the purpose of the Clean Air Act. *See* CAA § 302(k), 42 U.S.C. § 7602 (k); *see also* CAA § 304(f)(4), 42 U.S.C. § 7604 (f)(4).

A review of the production history for NUMMI using yearly production data obtained from an independent automotive industry data source suggests that NUMMI may have routinely exceeded its production limits on the truck line in 1996-2001, and may exceed them again in 2002, assuming all units for the truck line are manufactured at the facility. (This data is attached as Exhibit D, and a summary of the relevant data is attached as Exhibit E.) Petitioner has been unable to investigate further whether this industry source, the Detroit, Michigan-based Automotive News Data Center, accurately stated NUMMI's production figures and whether in fact NUMMI is in compliance with its production limits for the truck line. In addition, because the production data is stated in terms of trucks produced rather than *units* produced, Petitioner is unable to determine whether these figures are within NUMMI's current production limits and thus whether NUMMI has been in compliance with these limits. (In the October 7, 2002 public comments Petitioner submitted to the District on the draft Title V permit for NUMMI, Petitioner requested the District to determine NUMMI's compliance with its current production limits for the truck line. Petitioner has not yet received a response to its comments from the District.)

NUMMI should have notified the District of its over-productions, if indeed it occurred, and demonstrated that it resulted in no materials or emissions increases. Further, this demonstration would have required written approval from the APCO. *See* NUMMI Permit Condition # 9156, I.1, p. 173. However, Petitioner's review of documents for the facility indicated no evidence that NUMMI ever demonstrated to and received written approval from the APCO that such exceedances occurred yet did not result in materials or emissions increases.

Moreover, the records available during Petitioner's review did not include information on daily and hourly coatings usage and emission data. It is unclear if NUMMI exceeded the short-term emission limitations (*e.g.,* pound/hour, gallon/day, gallon/hour)—such as the limitations that are now proposed for deletion from the Title V permit—if in fact it exceeded the production limits. If NUMMI in fact has been out of compliance with these limitations, the Administrator

must object to the permit unless and until the District imposes an appropriate compliance schedule or plan. *See* 40 C.F.R. § 70.6(c)(3), 40 C.F.R. §70.5(c)(8).

III. The Production Limits for the Truck Line, Deleted from the Permit, Are Emissions Limitations that Must Be Retained Unless the District Can Justify the Substitute Limits Are Equivalent.

As stated above, the Title V permit for NUMMI must include all "emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements." 40 C.F.R. § 70.6 (a)(1). The proposed Title V permit for NUMMI does not assure compliance as it eliminates operational requirements.

The production limits for the truck line that are contained in draft Title V Permit Condition # 9156 I.1 and I.2 (250,000 unit limit) have been deleted from the permit. As justification for the deletion, the District states that these conditions "have been deleted because they are production limits which really don't limit emissions." *See* NUMMI Title V Permit Condition # 9156, p. 173. "Emissions are limited due to material usage and emission limits." *Id.* Petitioner requested that the District explain its calculations for emissions limits to justify deleting the production limits. *See* Exhibit B. For example, because production figures and material usage can be more easily quantifiable than estimated emissions data, the District should explain why, if the operational limits are eliminated, more reliable methods of determining compliance such as source tests and other monitoring are not required.

There is, however, no explanation in the permit or the accompanying documents of how the District will determine NUMMI's compliance with its material usage limits. Finally, the production limits may not simply be omitted from the Title V permit. *See* Section I concerning removal of short-term emissions limitations. The underlying permit that imposed the conditions must be revised first or concurrently. Therefore, the Administrator must object to the permit until such revision is made to avoid having to reopen the permit for cause. *See* 40 C.F.R. §70.7(g).

IV. The Statement of Basis Does not Include the Factual or Legal Basis for Certain Permit Conditions as Required by 40 C.F.R. § 70.7(a)(5).

The Administrator must object to the Title V permit because it lacks a sufficient statement of basis as required by 40 C.F.R. § 70.7(a)(5). According to § 70.7(a)(5), each Title V permit must be accompanied by a "statement that sets forth the legal and factual basis for the draft permit conditions." Without a sufficient statement of basis, it is virtually impossible for the public to evaluate the legal and factual basis for certain permit conditions and to prepare effective comments during the public comment period. According to U.S. EPA Region 10, the statement of basis should include:

> (1) Detailed descriptions of the facility, emission units and control devices, and manufacturing processes including identifying information like serial numbers that may not be appropriate for inclusion in the enforceable permit;
>
> (2) Justification for streamlining of any applicable requirements including a detailed comparison of stringency;
>
> (3) Explanations for actions including documentation of compliance with one time NSPS requirements (e.g. initial source test requirements) and emission caps; and
>
> (4) Basis for periodic monitoring, including appropriate calculations, especially when periodic monitoring is less stringent than would be expected.

See Elizabeth Waddell, Region 10 Permit Review, May 27, 1998 at 4. While the "Permit Evaluation and Statement of Basis for Major Facility Review Permit for New United Motor Manufacturing, Inc., Facility #A1438" ("Statement of Basis") is indeed an improvement from past Title V permits issued by the BAAQMD that contained no such statement, it is still an inadequate "legal and factual basis for the draft permit conditions." 40 C.F.R. § 70.7(a)(5).

The purpose of a Title V permit is to reduce violations of air pollution laws and improve compliance with and enforcement of those laws. 57 Fed. Reg. 32250, 32251 (July 21, 1992). Title V permits facilitate this goal by recording in one document all of the air pollution control requirements that apply to the source. *Id.* This gives members of the public, regulators, and the

source a clear picture of what the facility is required to do to comply with all applicable air pollution limits.

The purpose of a statement of basis is to enable the public and U.S. EPA to effectively review the permit by providing information regarding decisions made by the permitting authority in drafting the permit. It is intended to provide the public, regulators and the facility with an explanation of the factual and legal basis for proposed permit conditions. Pursuant to 40 C.F.R. § 70.7(h), the public is provided an opportunity to submit comments on the draft permit, with notice required to be given "including copies of the permit draft, the application, all relevant supporting materials . . . and all other materials available to the permitting authority that are relevant to the permit decisions." 40 C.F.R. § 70.7(h)(2). If, however, the statement of basis does not sufficiently explain the reason for the permitting authority's decisions, it fails to provide the public with meaningful opportunity to comment on the draft permit as required.

The Statement of Basis for the Title V permit for NUMMI does not sufficiently describe the legal or factual basis for certain permit conditions, and does not justify the elimination of certain applicable requirements. For example, as discussed above, short-term emissions limitations have been removed throughout the permit. Yet the removal of these limits warranted no explanation, other than with regard to one permit condition related to sources in the passenger line. *See above*, Grounds for Objections, Section I. Moreover, the Statement of Basis does not offer any rationale for the removal of the short-term emissions limitations throughout the rest of the Title V permit for NUMMI.

Second, the Statement of Basis fails to explain the District's determination that there are "no records of compliance problems at the facility." *See* Statement of Basis at 7. The District concluded that "ongoing compliance can be reasonably assured for this facility." See *id.* at 40. As discussed below, Title V requires more than a *reasonable* assurance of compliance. However, the Statement of Basis provides no description or explanation of the types of incidents that occurred at NUMMI which resulted in violations or excess emissions, nor does it provide any analysis of whether these incidents represent recurring compliance problems at the facility. Significantly, it provides no rationale for the District's determination that there are "no records

of compliance problems at the facility," which makes it difficult to determine whether the permit should have contained a compliance plan.

Third, the Title V permit for NUMMI was proposed on the basis of an outdated application, submitted by the facility in July 1996, which makes it difficult to determine the "applicable requirements" for the facility. According to the Statement of Basis, "[t]he owner certified that all equipment was operating in compliance on October 24, 1995. No non-compliance issues have been identified to date." *See* Statement of Basis at 40. Petitioner is not aware of any update in the application information in more than six years since its submission. *See* Statement of Basis at 40-41. Because District regulations require final action on an application deemed complete within eighteen months, the regulations contemplate that compliance status descriptions, as well other information contained in the application, be no older than eighteen months. *See* BAAQMD Regulation 2-6-410.2. Nevertheless, the Statement of Basis does not explain how the outdated application may accurately reflect current operations at the Facility. The section on "Differences between the Application and the Proposed Permit" includes only a list of new sources that have been added to the facility since the application was submitted, but no discussion of the potential for added emissions from these new sources.

Fourth, neither the proposed permit nor the Statement of Basis adequately explains the District's decision to rely on existing monitoring requirements to assure compliance for many VOC sources for NUMMI. It states: "Adequate recordkeeping requirements are in place to ensure compliance with all throughput limits for the coating and solvent sources at the facility … per existing permit conditions." *See* Statement of Basis at 37. The permitting authority must include the rationale for the monitoring methods it selected in the permit record. Yet the Statement of Basis fails to explain how these simple records-only requirements will ensure compliance with all applicable emissions limitations, standards and other requirements.

Absent a sufficient Statement of Basis "that sets forth the legal and factual basis for the draft permit conditions" as required by Title V regulations, the public is left with no rationale for the District's permit conditions and is unable to adequately review the permit.

Because the Statement of Basis accompanying the draft Title V permit for NUMMI does not sufficiently "set[ ] forth the legal and factual basis for the draft permit conditions" as required by Title V regulations, the Administrator must object to the issuance of the Title V permit.

V. The Permit Conditions Do Not Assure Compliance with All Applicable Requirements as Required by 40 C.F.R. §§ 70.6(a)(1), 70.6(c), and 70.7(a)(1)(iv).

Pursuant to the Clean Air Act, conditions in a Title V permit must be enforceable. *See* 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(b); 57 Fed. Reg. at 32268. Part 70 contains multiple requirements for ensuring compliance with all applicable requirements. *See, e.g.,* 40 C.F.R. §§ 70.6(a)(1), 70.6(c). Specifically, Title V regulations provide that a Title V permit may only be issued if "the conditions of the permit provide for compliance with all applicable requirements." *See* 40 C.F.R. § 70.7(a)(1)(iv). Notwithstanding these requirements, however, the Title V permit for NUMMI does not assure compliance with all applicable requirements.

First, the proposed Title V permit and accompanying materials, including the District's "review" of the facility's compliance, Compliance Review, provide no means for Petitioner to evaluate whether NUMMI is currently in compliance with all applicable requirements. Further, these documents provide no means for Petitioner to evaluate whether the District's determination that no compliance plan or schedule is required is proper. In fact, the Director of Enforcement concluded that only "*reasonable intermittent compliance* can be assured at this facility for the review period." *See* "Review of Compliance Record of Office Memorandum from Director of Enforcement to William DeBoisblanc, Director Permit Services, September 26, 2001 ("Compliance Review") (emphasis added) (attached as Exhibit F).[7] For reasons discussed below, this violates Title V requirements.

The Compliance Review, the District's sole assessment of the facility's ability to comply with the Title V permit, fails to include the most recent compliance information, including NUMMI's current compliance status, as the review only covers the period between September 1,

[7] Available at http://www.baaqmd.gov/permit/t5/NOTICES/A1438compliance.pdf (last accessed November 11, 2002).

2000 and September 1, 2001. This superficial "review" fails to describe or evaluate the types of enforcement-related incidents involved during the review period and the reasons they occurred; rather it simply enumerates the incidents without assessing whether these represent compliance problems requiring a compliance plan or additional monitoring. Without this information, the permit violates Title V requirements as it may not contain an appropriate compliance plan or schedule and monitoring to assure compliance with all applicable requirements.

Second, the District is not using the proper standard to determine compliance. The Compliance Review's conclusion that only "*reasonable intermittent compliance* can be assured at this facility for the review period" violates Title V regulations. *See* Compliance Review. The District's use of the terms "reasonable" and "intermittent" to modify the term "compliance" is not permissible. The term "intermittent" ordinarily means "stopping and starting at intervals" and is synonymous with "occasional, periodic, [and] sporadic." Webster's II New Riverside University Dictionary. Thus, the District's assurance of "intermittent compliance" can only mean noncompliance. The plain language of Title V regulations requires more. The regulations require compliance, not "intermittent" compliance.

As to the term "reasonable," it ordinarily means "not extreme or excessive." *Id.* Under the Title V regulations, however, it is insufficient for the District to assure only "non-excessive" compliance. The Title V regulations require the District to place conditions to assure compliance. *See* 40 C.F.R. § 70.1(b). Thus, the District's conclusion that the permit will be able to ensure "reasonable intermittent compliance" violates Title V regulations.

Third, the Compliance Review covers only a one-year period, from September 1, 2000 to September 1, 2001, which is nearly one year prior to the issuance of the draft Title V permit for NUMMI. Thus the review ignores a significant number of violations and episodes that occurred just prior to the review period. While neither the permitting agency nor U.S. EPA should necessarily have to review or assess a facility's *entire* compliance history for Title V purposes, a thorough review of the facility's current and recent compliance history is necessary to determine whether compliance can be assured. Further, because the Title V permit period covers five

years, a review of the facility's compliance history should also cover a comparable period of time. As discussed above, the District's Compliance Review for NUMMI is inadequate.

At least five NOVs were issued to NUMMI in 2000,[8] at least four of which were not taken into account by the District's Compliance Review as they were issued prior to September 1, 2000. At least two of these represent violations for more than one regulation, including monitoring and reporting violations. For example, on April 27, 2000, NOV # 3855 was issued to NUMMI for failure to meet a permit condition for a period of 18 days during February 2000.[9] *See* NOV # 3855, April 27, 2000 (attached as Exhibit G). In this incident, a parametric monitor for a thermal oxidizer in a primer booth (S# 1008) was inoperative and NUMMI failed to record the temperature manually every two hours as required by its permit. NUMMI did not report the inoperation of the monitor to the District.[10] The District Reporting Inspector "was not able to determine compliance with the operating temperature P/O condition requirement" until February 28, 2002. *Id.* This extended violation of recordkeeping requirements by NUMMI is cause for concern and suggests not only that NUMMI has a compliance problem but may also have a problem with reporting to the District.

NUMMI had other problems with monitoring and reporting during that time period, as well. On August 31, 2000—one day *before* the period covered by the District's Compliance Review)—NOV # 3867 was issued to NUMMI for its repeated failure to report temperature excursions to the District on four different occasions for three different months between September 1999 and March 2000, as required by its permit and by District regulations. *See* NOV # 3867, August 31, 2000 (attached as Exhibit H). In this incident, a thermal oxidizer for a primer booth (S# 3008) and oven (S# 3009) was operated below the required temperatures during production on September 6, 1999, September 9, 1999, October 3, 1999, and March 27, 2000. NUMMI was cited by the District for violating SIP Regulation 1-523.3, 64 Fed. Reg. 34558

[8] According to District records for NUMMI Facility #A1438, NOVs were issued in 2000 on April 27 (# AO3855); August 11 (# AO3859); August 30 (# AO3866); August 31 (# AO3867); and December 5 (# AO3872).

[9] NOV # 3855 states that this violation occurred between February 1, 2000 and February 25, 2000, with NUMMI finally coming into compliance on February 28.

[10] According to Ken Smith, Environmental Engineer at NUMMI, the facility later discovered that its "backup system showed a two month gap; a period where temperature wasn't being logged."

(June 28, 1999), as well as Permit Condition #14205.3. SIP Regulation 1-523 requires that any violation of permit conditions or District regulations to which a source is required to conform be reported to the APCO within 96 hours, including the "nature, extent and cause" of the violation, as indicated by the parametric monitor. While these temperature excursions were *later* determined by the District to be "allowable" under NUMMI Permit Condition #14205.3, they still were not reported to the District by NUMMI in its monthly reports as required by its permit. *Id.* These examples suggest that NUMMI may have recurring problems with the operating temperature of its thermal oxidizer units. Moreover, NUMMI's disregard for reporting in this case—both initially when it failed to report the violations to the APCO within 96 hours, and again when it failed to report the temperature excursions as "allowable" in its monthly reports to the District—causes concern about its ability to comply with applicable monitoring, recordkeeping and reporting requirements.

Finally, although Petitioner formally requested to review the District's enforcement file for NUMMI from 1996 to the present, Petitioner has been unable to inspect the complete enforcement file on which the District's Compliance Review is based, as well as any enforcement records since the review period, despite diligent efforts.[11] *See* Exhibit B, Sections E-F, pp. 7-13 (Petitioner's comments regarding efforts to inspect the complete enforcement files for the facility). These issues are also discussed below in Section V.

Thus, Petitioner is unable to fully evaluate whether the District's compliance determination is appropriate. Therefore, the Administrator must object to the Title V permit for NUMMI until it is determined that a compliance plan or schedule is not required, pursuant to 40 C.F.R. §§ 70.5(c)(8) and 70.6(c)(3), and that additional monitoring and reporting are not required, pursuant to 40 C.F.R. §70.6(c)(1), to assure compliance with all applicable requirements.

[11] Pursuant to a California Public Records Act request submitted on September 4, 2002, Petitioner inspected the BAAQMD enforcement files for NUMMI made available on September 27, 2002. The records for NUMMI were classified as P/1438, S/A1438 and A1438. These records include Episode Reports, Inspection Reports, Notices of Violation, and Letters and Memoranda, that had been electronically scanned and stored on CD-ROM.

VI. The Permit Review Process Did Not Comply With the Public Participation Requirements of the Clean Air Act § 503(e), 42 U.S.C. § 7661b(e) and 40 C.F.R. § 70.7(h)(2).

The Clean Air Act and Title V regulations require that interested members of the public be able to effectively participate in the Title V permitting process by reviewing draft permits and supporting documents and providing comments. In particular, "[a] copy of each permit application, compliance plan …, emissions or compliance monitoring report, certification, and each permit issued under [Title V], shall be available to the public." 42 U.S.C. § 7661b(e). Thus, interested members of the public must be able to obtain information related to the permit and the permitting decision, "including copies of the permit draft, the application, all relevant supporting materials . . . and all other materials available to the permitting authority that are relevant to the permitting procedures." *See* 40 C.F.R. § 70.7(h)(2).

Because U.S. EPA's period for review of the proposed Title V permit for the facility runs concurrent with the period for public review, U.S. EPA's review period expired prior to the deadline for public comments.[12] In addition, Petitioners have received no response from the District regarding the public comments that were submitted. However, due to the concurrent review problem, this petition must be filed within the required statutory period.

As discussed above, Petitioner submitted a formal request for documents from the District on September 4, 2002, pursuant to the California Public Records Act, Cal. Gov. Code § 6250. After the 10-day deadline for notification passed, *see id.* at §6253(a), on September 18, 2002, Petitioner was finally able to inspect many of the "permit-related" files for the facility, including Applications for Authorities to Construct and Permits to Operate. However, the original permitting files related to the truck and passenger line were not included on the list of files available for inspection. Moreover, obtaining a copy of the emissions inventory for the facility involved repeated efforts, finally including telephone call to the District's Assistant Counsel, in which Petitioner was assured that a copy would be forthcoming.

[12] The initial deadline for public comments was September 20, 2002. A deadline for supplemental comments was imposed for October 7, 2002. However, the U.S. EPA's review period expired on September 15, 2002, prior to either of these deadlines for public comment.

Further, no enforcement files were made available for inspection until September 27, 2002, after the initial deadline for public comments. As discussed below, the inconsistency of these files and those relied upon in the District's Compliance Review made it virtually impossible for Petitioner to fully evaluate the Title V permit for NUMMI, particularly with regard to whether it assured compliance.

In particular, the District's Compliance Review states that NUMMI received eight Notices of Violation ("NOVs") between September 1, 2000 and September 1, 2001 and that there were seven reported breakdowns, five with associated excesses. Compliance Review at 2. However, the District enforcement files for NUMMI that were made available for public inspection on September 27, 2002 included only one NOV since September 1, 2000[13] and only four Episode Reports during the period of September 1, 2000 and September 1, 2001.[14] Thus, the District's determination that NUMMI has no compliance problems appears to be based on records that have only partially been made available for public inspection. Further, as stated above, these incidents have not been described or evaluated by the District in its Compliance Review.

Due to Petitioner's lack of access to "all relevant supporting materials . . . and all other materials available to the permitting authority that are relevant to the permitting procedures," Petitioner is unable to fully evaluate the Title V permit proposed to NUMMI and provide meaningful input regarding the sufficiency of the permit's requirements, particularly with regard to whether it assures compliance with all applicable requirements given the facility's compliance history. *See* 40 C.F.R. § 70.7(h)(2). The Administrator acknowledges that such defects provide grounds for objecting to a Title V permit. In a recent final order responding to a Title V petition, she stated, "In this case, the Petitioner has not alleged that [the permitting agency] failed to make the materials listed in the public notice for the draft Monroe Power permit available for review. Nor has the Petitioner alleged that it requested, or that [the permitting agency] failed to make available, any other particular information. Therefore, there is no basis for objecting to the

[13] *See* BAAQMD Enforcement Files for NUMMI, Facility #A1438: NOV #AO3872, December 5, 2000.
[14] *See* BAAQMD Enforcement Files for NUMMI, Facility A1438: EPS ID# 07156, November 15, 2000; EPS ID# 07278, January 17, 2001; EPS ID# 03D34, May 21, 2001; EPS ID# 03E34, July 2, 2001.

Monroe Power permit on this ground." *See* In re: Monroe Power Plant, Petition No. IV-2001-8 (EPA Admin. October 9, 2002) at 8. In this case, the District failed to make critical documents available for review related to NUMMI's compliance history, preventing Petitioner from fully evaluating the permit's ability to assure compliance with all applicable requirements. Accordingly, the Administrator must object to the Title V permit for NUMMI.

VII. The Permit Contains Inadequate Monitoring and Reporting Requirements to Assure Compliance with Permit Terms and Conditions as Required by 40 C.F.R. § 70.6(a)(3) and 40 C.F.R. § 70.6(c)(1).

A. Lack of Monitoring

Title V regulations require "monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance," and requires all Title V permits to contain "testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." *See* 40 C.F.R. §§ 70.6(a) and 70.6(c)(1).

First, while the District added source test requirements for certain VOC abatement devices to demonstrate compliance with abatement efficiencies, it determined that "adequate recordkeeping requirements are in place to ensure compliance with all throughput limits for the coating and solvent sources at the facility . . . per existing permit conditions" for most sources of VOCs. *See* Statement of Basis at 37. The permit conditions must include "a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices." *See* 40 C.F.R. § 70.6(c)(5)(ii). Yet the District fails to explain, either in the permit or accompanying materials, how these records-only monitoring requirements will effectively assure compliance with all applicable VOC emissions limitations, standards and other requirements, including the NAAQS for ozone.

Second, monitoring is required to verify compliance with SIP Regulation 8-2-301 (miscellaneous sources—organic emission limitations). Numerous sources listed in the proposed Title permit in Tables VII-N, AA, BA and BN are subject to SIP Regulation 8-2-301. *See*

proposed Title V Permit for NUMMI at 269, 284, 346, and 377. However, the District has proposed no monitoring of these sources to ensure compliance with the limits imposed by District Regulation 8-2.

Third, test methods for certain source test requirements must be specified. Numerous table entries in the proposed Title V permit, Table VII (Monitoring Requirements) indicate that a source test will be carried out in order to demonstrate compliance with a permit condition. For example, Table VII-B, *see* draft Title V Permit at 252, requires an annual source test of the Passenger Body ELPO Oven (S-3) in order to assure compliance with permit condition #4281-2.[15] However, Table VIII ("Test Methods") provides no indication of the analytical methods that will be used to verify these permit conditions. Petitioner has requested that the District correct this problem. In addition, various sources listed in Tables VII-N, AA, BA and BN,[16] which are subject to SIP Regulation 8-2-301, should also be subject to source testing in order to assure compliance with the permit conditions.

Finally, certain testing methods may underestimate VOC emissions. Petitioner assumes the District proposes to use test Method ST-7 or U.S. EPA Methods 25/25A to determine VOC emissions from various sources, such as the Passenger Body ELPO oven (S-3) and its thermal oxidizer (A-4). District method ST-7 determines the non-methane organic carbon ("NMOC") present in a sample of organic gases, and also allows for the estimation of VOC concentrations based upon a chemical-specific adjustment of the NMOC concentration. However, this adjustment depends upon an accurate determination of the average molecular weight of VOC per carbon ("X_{voc}") in the sample. Section 9.5 of method ST-7 states that, "if it is not practicable to determine an estimate X_{voc}, then a value of 14 lb/lb-mol shall be used." *See* Source Test Procedure, ST-7 at ST-7-8. The problem with this procedure is that typical values of X_{voc} for oxygenated VOCs, such as those used in large quantities at NUMMI, are significantly larger than 14 lb/lb-mol. For example the X_{voc} of butyl cellosolve is 19.7 lb/lb-mol. In cases where oxygenated VOCs are being measured, using an X_{voc} of 14 lb/lb-mol could thus significantly

[15] Other examples include source test requirements listed on draft Title V permit pages 254, 266, 279, 288, 298, 301 and 302.

[16] *See* draft Title V permit pages 269, 284, 346, and 377.

underestimate VOC emissions. The problem of underestimating oxygenated VOCs can also occur with the EPA test methods, if such VOCs are not calibrated correctly and if oxygenated VOC mixtures are not separated and subjected to chemical-specific analysis. Recognizing this problem, EPA has stated its preference for counting the total amount of speciated VOCs, as opposed to relying on concentrations reported as NMOC or propane equivalents.[17]

Because of the problem of underestimation, it is important that additional conditions be placed in the Title V Permit such that VOC source testing includes chemical-specific calibration and separation of mixtures by gas chromatography. The use of test methods that rely upon a standard X_{voc} of 14 lb/lb-mol or quantitating VOCs as propane, are not sufficient assure compliance with the permit limitations or the relevant SIP regulations.

Therefore, the Administrator must object to the permit until the necessary revisions are made to the Title V permit.

B. Lack of Reporting

In addition to insufficient monitoring requirements, the proposed permit also fails to include proper reporting requirements in a number of permit conditions. In other places in the Title V permit, emissions limitations are not practically enforceable, particularly for most VOC sources, because there is not a specific requirement to report and submit the monitoring logs to the District.

First, in many places in the permit, the facility is required to maintain logs at the facility for five years.[18] However, the permit fails to require the data collected in these logs to be submitted or reported every six months as required by Title V. *See* 40 C.F.R. §§ 70.6(a)(3)(i)(B) and § 70.6(a)(3)(iii)(A). Several permit conditions state that these logs "shall be kept on site and

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[17] As noted in recent EPA guidance on emissions trading, "[a] VOC emissions source should calculate emissions in terms of the actual species present if adequate data are available to do so because this yields the most accurate mass. For example, if a source measures VOC emissions with a CEM and the fraction of each compound in the emission stream is known, the total VOC emissions should be expressed in terms of the sum of the actual compounds, not 'as propane.' This approach should be applied whenever reliable speciation data are available, based on a monitoring system that actually separates and measures components of the emissions stream or on process data that indicate what compounds are present and in what proportions." *See* "Open Market Trading Emission Quantification, Stationary Source Technical Guidance," U.S. EPA, April 2001, at 5-5. *See* http://www.epa.gov/ttncaaa1/t1/meta/m14258.html (last accessed October 7, 2002).

[18] *See, for example,* Permit Condition # 10709, Title V Permit, p. 229; Permit Condition # 13984, Title V Permit, p. 230; Permit Condition # 13985, Title V Permit, p. 230.

made available to District staff upon request." Without requiring that the data kept in the logs be reported to the District every six months, the permit condition language does not comply with Title V requirements. The permit must include the semi-annual reporting requirement in each place in the permit where the facility is required to make the log "available to District staff upon request."

Second, the permit fails to include semi-annual reporting requirements throughout the permit. The permit consistently requires NUMMI to maintain records at the facility, but does not require those records to be regularly submitted to the District. This defeats one of the central purposes of Title V, to allow the public the ability to review whether a facility is in compliance with all permit terms and conditions. If records are maintained solely at the facility, the public will have no access to them either from the District or through a state Public Records Act request. It is unclear how violations will be detected and enforced—by the District, by U.S. EPA or by the public pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604—if monitoring results are not required to be reported by a specific requirement in the permit conditions.

Standard Condition F in the proposed Title V permit (Monitoring Reports) fails to compensate for this problem. Standard Condition F states that "[r]eports of all required monitoring must be submitted to the District at least once every six months, except where an applicable requirement specifies more frequent reporting." *See* Title V Permit for NUMMI at 5. Even though this condition requires semi-annual reporting, the lack of a specific requirement in permit conditions that contain recordkeeping requirements creates unnecessary ambiguities in the permit. These ambiguities could support an argument that only certain information must be reported to the District, and could result in the withholding of important information that should be available to the public as required by Title V.

Third, additional reporting requirements may be required to show compliance, particularly where there is reason to be concerned about the facility's ability to maintain continuous compliance. As discussed above, the permit does not assure compliance with all applicable requirements. According to the Administrator, a Title V facility may be required to

report on a more frequent than semi-annual basis "if there is a reason for concern regarding the facility's ability to maintain continuous compliance." *See* In re: Citgo Petroleum Corporation – Doraville Terminal, Petition No. IV-2001-4 (EPA Admin. June 5, 2002) at 6. Because there is reason to be concerned about NUMMI's "ability to maintain continuous compliance," additional reporting requirements should be imposed on permit conditions related to sources with cause for concern, in particular VOC sources.

Therefore, the Administrator must object to the permit unless and until adequate monitoring and reporting requirements are imposed to assure compliance with all applicable requirements.

VIII. The Permit Fails to Comply with Section 112(j) of the Clean Air Act, 42 U.S.C. § 7412(b)(1) as modified by 40 C.F.R. § 63 Subpart C, regarding National Emission Standards for Hazardous Air Pollutants.

The Clean Air Act and Title V regulations define a major source of hazardous air pollutants ("HAPs") as one that emits more than 10 tons per year (t/yr) of any HAP, or more than 25 (t/yr) of any combination of HAPs.[19] The Statement of Basis for NUMMI claims that the facility is not a major source of HAPs. *See* Statement of Basis at 7. However, Petitioner has reviewed a recent District's emissions inventory for the facility (attached as Exhibit I),[20] specifically the emissions data for or butyl cellosolve (2-butoxyethanol), toluene and xylene, all of which are HAPs. The inventory indicates that NUMMI is a major source of butyl cellosolve, and may also be a major source of toluene and xylenes. (*See* attached Exhibit J**,** a summary of emissions data for these three HAPs, excerpted from Appendix E.) According to this data, if accurate, NUMMI may thus be subject to various National Emission Standards for Hazardous Air Pollutants ("NESHAPs"), such as the currently proposed NESHAP for the surface coating of miscellaneous metal parts and products (eventually to become 40 C.F.R. § 63 Subpart MMMM). The proposed rule lists the coating of various automobile components, such as, "engine parts,

[19] The HAPs are listed in Section 112(b)(1) of the Clean Air Act (the "Act"), 42 U.S.C. § 7412(b)(1). This list has been modified by 40 C.F.R. § 63 Subpart C.

[20] An electronic spreadsheet version of this data was provided by the District on September 30, 2002.

vehicle parts and accessories, brakes, axles, etc.," as examples of potentially regulated activities. *See* 67 Fed. Reg. 52780 (Aug. 13, 2002). The facility is required to state in its application that it will comply with all applicable requirements that will become effective during the permit term of five years. *See* 40 C.F.R. § 70.5(c)(8)(ii)(B). Thus, NUMMI must comply with the proposed rule when it is final.

Moreover, the "MACT hammer" provisions of the Clean Air Act, Section 112(j), s*ee* 42 U.S.C. § 7412(b)(1), require NUMMI to have submitted, by May 15, 2002, a Part 1 application to the District identifying any of its operations that may be subject to Subpart MMMM, as well as the planned NESHAP for Surface Coating of Automobiles and Light Duty Trucks (to become 40 C.F.R. § 63 Subpart IIII). Petitioner has requested that the District verify that such Part 1 applications have been submitted on time.[21] In addition, these Part 1 MACT applications should have been included as part of the Title V permit application prior to finalization of the Title V permit. Further, according to the MACT hammer,[22] NUMMI must also submit by May 15, 2003, a Part 2 application to the District containing a proposed facility-specific MACT standard for sources that will become subject to the NESHAP. Petitioner has requested that this information be documented in the Statement of Basis and the Title V Permit.

IX. Conclusion

In light of the significant violations of 40 C.F.R. Part 70 identified in this petition, the Administrator must object to the Title V permit for the New United Motor Manufacturing, Inc.

Dated: November 13, 2002

Respectfully submitted,

[21] ELJC Staff Scientist spoke with District Senior Air Quality Engineer Ms. M. K. Carol Lee on October 3, 2002, who stated she was unaware that any such application has been submitted.

[22] *See* 67 FR 54804 regarding a settlement pursuant to Sierra Club v. U.S. EPA, D.C. Circuit, #02-1135, (4/25/02).

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